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The American Bar Association Journal

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I.

FOREWORD.

The American Bar Association was organized in 1878, and has since published, year by year, a report of its annual meetings. In 1906 the extent of its transactions was found to require the publication of the report (Vol. XXX) in two volumes. In 1907 a new bureau was created, under the name of the Bureau of Comparative Law, which has since published an annual bulletin containing notes on foreign legislation of interest to Americans, and on the progress and development of international private law.

At the meeting of the Association at Washington, in 1914, the Executive Committee was given authority, should they deem it expedient, to provide for the publication of a journal of the announcements and transactions of the Association, which might also include some of the work of various affiliated bodies, which from time to time have been organized under its auspices, such as the Association of American Law Schools, the American Institute of Criminal Law and Criminology, and the Conference of Commissioners on Uniform State Laws. The Executive Committee took favorable action, and the establishment of the quarterly, of which this constitutes the first number, is the result. The JOURNAL will henceforth be sent to every member of the American Bar Association, without any additional charge. He pays for it by paying his annual dues, which are now $6.

It is proposed to devote the next number (for April, 1915) primarily to the subjects heretofore handled in the annual bulletin of the Bureau of Comparative Law. The regular annual publications of the Bureau will be henceforth made in the quarterly numbers of THE AMERICAN BAR ASSOCIATION JOURNAL.

The next (April) number will therefore be sent to all members of the Bureau, in lieu of the annual bulletin, which is to be discontinued. No change is contemplated in the present mode of publishing translations of codes, in separate volumes, under the auspices of the Bureau.

Correspondence as to business relating to this JOURNAL may be addressed to the Secretary of the American Bar Association, Munsey Building, Baltimore, Maryland; that in regard to the contents of its number devoted to Comparative Law to Robert P. Shick, Editor, Franklin Bank Building, Philadelphia, Pennsylvania; that in regard to the contents of the other numbers to the Chairman of the Committee on Publications, Simeon E. Baldwin, New Haven, Connecticut.

II.

REPORT

OF THE

COMMITTEE ON THE TORRENS SYSTEM AND REGISTRATION OF LAND TITLES.

MADE TO THE CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AT ITS WASHINGTON MEETING IN 1914.

This committee presented to the last Annual Conference of Commissioners in Montreal a tentative act for a uniform state law for the registration of titles to land, but it was not printed nor discussed by the Conference. A second tentative act is presented to this Conference with the hope that time may be found for its full consideration. This draft has been made after a study of the Australian and Canadian Torrens Acts and of all the land registration acts passed in the United States. Since the last Conference Mississippi has passed such an act, and there are now 11 states with legislation on this subject, namely, California, Colorado, Illinois, Massachusetts, Minnesota, Mississippi, North Carolina, New York, Ohio, Oregon and Washington. The matter is being actively agitated in other states, and the popular demand for such legislation is likely to be greatly increased by the passage of the Federal Reserve Act by the 63d Congress, approved December 23, 1913. This act to a large extent removes the prohibition heretofore existing against loans on lands by national banks, and permits any national bank or banking association not situated in a central reserve city to make loans secured by improved and unencumbered farm land, within its Federal Reserve District, no such loan to be made for a longer time than five years nor for an amount exceeding 50 per centum of the actual value of the property offered as security. Any such bank may now make such loans in an aggregate sum equal to 25 per centum of its capital and surplus or to one-third of its time deposits, and such bank may continue hereafter as heretofore to receive time deposits and to pay interest on the same. Few members of the American Bar have taken the time to study the provisions and operations of

land registration acts. These acts in some respects present novel propositions, and it is in keeping with the traditions of the profession to question their constitutionality. It is said that such legislation is all very well in England, Australia and Canada where there are no written constitutions to limit the power of Parliament, but that the case is wholly different in the United States. And so a respectable portion of the Bar begin by assuming that no land registration act could be passed in the United States which would not be liable to be upset on constitutional grounds. And though our courts have in direct contests sustained the present acts of the states mentioned above in every instance in which they have been attacked, there are still many lawyers who are inclined to doubt the constitutionality of such legislation. This doubt in most instances rests merely on vague general ideas with no accurate knowledge of what has been decided by the courts. It is believed that if the Bar were generally informed on this subject all doubts and opposition to land registration would disappear. It has been thought well, therefore, as briefly as possible, to give an account of the attacks that have been made in the several states on the constitutionality of land registration acts.

1. PEOPLE *vs.* CHASE, 165 ILL. 527; 36 L. R. A. 105. Nov. 9, 1896.

This case held the Illinois Registration Act of 1895 unconstitutional. The only contention noticed by the court was that the act conferred judicial powers upon the recorder of deeds who was made registrar of titles; and this was held sufficient to render the whole law invalid. But the legislature promptly passed a new act in 1897 which has stood the test of the courts, as we shall show.

2. STATE *vs.* GUILBERT, 56 OHIO ST. 575; 38 L. R. A. 519. JUNE 22, 1897.

In this case the Ohio Land Registration Act of 1896 was attacked: (1) Because it did not provide "due process of law." (2) Because it provided for the taking of private property for private purposes without the owner's consent. (3) Because it

conferred judicial powers on the recorder. (4) Because it was a law of a general nature not having uniform operation throughout the state. (5) Because it impaired the obligation of contracts. This Ohio statute was very crudely drawn, and the court was dead against it though it did not discuss the last two points raised. It is generally conceded that this act was unconstitutional, but all the conclusions of the court have not been entirely approved in subsequent decisions in other states. It was very effective, however, in Ohio and resulted in the repeal of the act by the legislature in 1898, and checked further legislation in that state until its Constitution was amended in 1913.

This double appearance of misfortune was well calculated to discourage the hopes and aims of those who desired a reform of the land laws. But the result has been far different from what might have been at first supposed. Another act was promptly passed in Illinois in 1897, as we have stated; in the same year an act was passed in California; and in the following year the Massachusetts act was passed, to which eight other acts have now been added. And in this connection it should be stated that Sec. 100 of the Constitution of Virginia has given the General Assembly "power to establish such court or courts of land registration as it may deem proper for the administration of any law it may adopt for the purpose of the settlement, registration, transfer, or assurance of titles to land in the state or any part thereof"; and it is expected that the next legislature will exercise this power by the passage of an act.

3. PEOPLE *vs.* SIMON, 176 ILL. 165; 44 L. R. A. 801. OCT. 24, 1898.

In this case the Illinois Registration Act of 1897 was attacked: (1) Because it conferred judicial powers on registrars and examiners of titles. (2) Because it permitted the taking of private property "without due process of law." (3) Because it was to take effect only in such counties as might vote in favor of it. (4) Because it was not a general but special law. But the act was sustained against all objections. The powers exercised by the registrar under the act were declared analogous to those

exercised by the Commissioner of Patents; and also in a measure, like the duties performed by officers of the land office. The court said:

"Duties of a similar nature, involving judgment or discretion, and the application of the law to the facts, are devolved both under the state and federal laws upon many other executive officers, legally. In some instances, it is even held that in the exercise of such judgment the officer is free from judicial interference. But in the case of the registrar this act provides that any person feeling himself aggrieved by the act or neglect of this officer, in any matter pertaining to the duties required of him, may file a petition in equity in the proper court, making the registrar and other persons interested parties defendant, and that the court may proceed therein as in other cases in equity, and may make such order or decree as shall be according to equity in the premises and the purport of the act. This, with the well-known jurisdiction of the courts in mandamus, injunction, rescission, cancelation, bills of relief, and the like, will effectually protect the citizen against any arbitrary conduct on the part of the officer."

And with regard to the duties of the registrar after original registration the court said:

"Particular stress, however, is laid by counsel for appellant upon the contention that the duties of the registrar as to the subsequent registration of land held in trust upon conditions or limitations are the exercise of judicial power, in violation of the terms of the Constitution. The act requires, where the land is subject to a trust, condition, or limitation, that the original certificate issued shall contain the words 'in trust,' 'upon conditions,' or 'with limitations,' as the case may be. When such land is to be transferred, it is provided that the registrar shall not issue a new certificate, nor shall any transfer of, or charge upon, or dealing with the land, be made, unless pursuant to the order of some court, or upon the written opinion of the two examiners that such transfer, charge, or dealing is in accordance with the true intent and meaning of the trust, condition, or limitation, whereupon he shall proceed to register the title; and such registration is to be conclusive in favor of the grantee, and those claiming under him in good faith and for a valuable consideration, that such transfer, charge, or other dealing is in accordance with the true intent and meaning of the trust, condition, or limitation. (Secs. 68, 69.) If the registration be made pursuant to the order or finding of a court of competent jurisdiction, the

acts of the registrar are purely ministerial; but, if made upon the opinion of the two examiners, he is required to exercise a judgment of his own. These duties do not differ materially from those already examined, except that here the decision is made conclusive, in favor of the person taking the transfer in good faith and for a valuable consideration, that the transfer or charge is in accordance with the true intent and meaning of the trust, condition, or limitation. This does no more than abrogate the rule in equity which requires the purchaser of trust property to see to the application of the purchase money, and the inclination of courts now is to withdraw from that rule."

With regard to "due process of law," the court said:

"The act does contemplate, in some contingencies, at least, actual personal service, and the general law provides for publication as to unknown owners and persons in interest, and non-residents. An applicant may proceed in this way, and in strict accordance with the act obtain a decree or finding as to his title which will be binding beyond all question, so that, even if the proper construction of the provision were that it attempted to authorize judgment against a resident notified only by publication, yet the law can be given practical effect, in which event only the particular provision would fail, and not the whole law."

And replying to the contention that by proceedings, subsequent to the initial registration, an owner might be deprived of his property without "due process of law," the court said:

"The true theory of this act, as we understand it, is that all holders of vested rights shall be subjected to an adjudication in a court of competent jurisdiction, upon due notice, in order that the true state of the title may be ascertained and declared, and that thereafter the tenure of the owner, the right of transfer and encumbrance, and all rights subsequently accruing shall be determined in accordance with the rules now prescribed. 'A state may, by statute, prescribe the remedies to be pursued in her courts, and may regulate the disposition of the property of her citizens, by descent, devise, or alienation.' (3 Washb. Real Prop., 4th ed., page 187.) 'The right of ownership which an individual may acquire must therefore, in theory at least, be held to be derived from the state, and the state has the right and power to stipulate the conditions and terms upon which the land may be held by individuals.' (Tiedeman, Real Prop., 2d ed., Sec. 19.) 'The power of the state to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary

disposition of it may be exercised by its owners, is undoubted.' (Arndt *vs.* Griggs, 134 U. S. 316; 33 L. ed. 918, on page 321; 134 U. S. and page 919, 33 L. ed.) 'The power of the legislature in this respect (as to changing the rules of evidence as to the burden of proof), whether affecting proof of existing rights, or as applicable to rights subsequently acquired, or to future litigation, so long as the rules of evidence sought to be established are impartial and uniform in their application, is practically unrestricted.' (Gage *vs.* Caraher, 125 Ill. 447, on page 455.) It being true that the law may prescribe rules of property and rules of evidence by which the title is to be shown, we see no reason why the transfer of real estate may not be made in the way contemplated, and why it may not be made compulsory to make it in that way, if the legislature so determines."

The provision of the statute shutting off the claims of all persons, whether personally or constructively served with notice, after two years from the entry of the decree was held good "as a limitation law." There was no discussion of the indemnity or the assurance fund feature of the law, because the court said the act could stand and accomplish its purpose without it.

In the course of his opinion, Wilkin, J., said:

"The recent case of State, Atty.-Gen., *vs.* Guilbert, 56 Ohio St. 575, 38 L. R. A. 519, is relied upon by counsel for appellant in support of the position taken by them on both of the above points. We have given that case careful consideration. With its conclusion, viz., that the Ohio statute was unconstitutional, we agree, but what is said in argument cannot be adopted as applicable to this case. The main ground upon which that decision rests is that the statute, in providing for the initial registration, attempts to give jurisdiction to the court without service of summons, and this, it is held, falls short of that due process of law guaranteed by the Constitution. The only notice which that act required was to be given by the applicant himself, and in the application it was unnecessary to name any person claiming an adverse interest as party defendant. On the other feature of the case, viz., as to what constitutes the exercise of judicial power, the opinion is not clear. In the reasoning on that point, Judge Cooley's definition of 'judicial power' is adopted, which we have seen does not serve to distinguish between such quasi judicial powers as may be properly exercised by executive or ministerial officers and those powers which belong solely to the judicial department."

4. TYLER *vs.* JUDGES, 175 MASS. 71. JAN. 3, 1900.

The opinion in this case was delivered by Mr. Justice Holmes then Chief Justice of the Massachusetts Supreme Judicial Court. The Massachusetts Act was attacked: (1) Because it deprived all persons except the registered owner of any interest in the land without due process of law. (2) Because it conferred judicial powers on the recorder and assistant recorder. (3) Because there was no provision for notice before registration of transfers or dealings subsequent to the original registration. In discussing the question of due process of law after recounting the notice required by the act, the court said:

"If it does not satisfy the Constitution, a judicial proceeding to clear titles against all the world hardly is possible, for the very meaning of such a proceeding is to get rid of unknown as well as known claims—indeed, certainty against the unknown may be said to be its chief end; and unknown claims cannot be dealt with by personal service upon the claimant. It seems to have been the impression of the Supreme Court of Ohio, in the case most relied upon by the petitioner, that such a judicial proceeding is impossible in this country. (State *vs.* Guilbert, 56 Ohio St. 575, 629.) But we cannot bring ourselves to doubt that the Constitution of the United States and of Massachusetts, at least, permit it as fully as did the common law. Prescription or a statute of limitations may give a title good against the world, and destroy all manner of outstanding claims without any notice or judicial proceeding at all. Time and the chance which it gives the owner to find out that he is in danger of losing rights are due process of law in that case. (Wheeler *vs.* Jackson, 137 U. S. 245, 258.)"

The difference between an action *in personam* and a proceeding *in rem* was indicated as follows:

"If, on the other hand, the object is to bar indifferently all who might be minded to make an objection of any sort against the rights sought to be established, and if any one in the world has a right to be heard on the strength of alleging facts which, if true, show an inconsistent interest, the proceeding is *in rem*. (2 Freeman, Judgments, 4th ed., Sec. 606, *ad fin.*)"

And in pointing out the notice required in proceedings *in rem* this language was used:

"Looked at either from the point of view of history or of the necessary requirements of justice, a proceeding *in rem* dealing

with a tangible *res* may be instituted and carried to judgment without personal service upon claimants within the state or notice by name to those outside of it, and not encounter any provision of either constitution. Jurisdiction is secured by the power of the court over the *res.*"

And as this utterance has been quoted with approval in Leigh *vs.* Green, 193 U. S. 79, 92, it may be taken as authoritative. It was held by the court that effectual notice and an opportunity to be heard should be given to all claimants who are known or who, by a reasonable effort can be ascertained; and for this purpose the notice provided by the act was considered sufficient. It was suggested, however, by the court that the act "ought to be amended in the direction of still further precautions to secure actual notice before a decree is entered"; and it was subsequently amended by a provision expressly authorizing the court to, "so far as it considers it possible, require proof of actual notice to all adjoining owners and to all persons who appear to have any interest in or claim to the land included in the application." (Sec. 31.) At the time the decision we are considering was rendered, the act contained only these provisions for notice: (1) Notice by publication in a newspaper, after the report of the examiner of titles, the names of all persons known to have an adverse interest, and the adjoining owners and occupants so far as known being mentioned. (2) A copy of said notice to be sent by the Recorder by mailing a registered letter to every person named therein whose address was known. (3) Posting of said notice in a conspicuous place on each parcel of land included in the application, by a sheriff or deputy sheriff, 14 days at least before the return day thereof; the sheriff's return to be conclusive proof of such service. (4) A general provision that the court "may also cause other or further notice of the application to be given." It will be observed that there was no personal service of process by the sheriff or any other officer upon any party to the proceedings. Yet the court sustained the act.

In discussing the duties of the recorder and assistant recorder, the court said:

"The ordinary business of registration is very nearly ministerial. There is no question to be raised, or which can be raised.

If there is a question, either raised by any party in interest or occurring to the assistant recorder, it is to be referred to the judge for decision (Sec. 53). But whatever may be thought of the original act, by amendment even the ordinary business is to be done only 'in accordance with the rules and instructions of the court.' (St. 1899, c. 131, Sec. 8.) *Under this amendment registration is the act of the court.* The fact that it may be done by the assistant recorder under general orders when there is no question is not different from the power of the clerk to enter judgment in cases ripe for judgment under a general order or rule of the superior court.

And in disposing of the three objections it was said:

"The act shows throughout the intent that no one shall be concluded without having a chance to be heard; and although some of its methods are new to this Commonwealth, we cannot say that the precautions as to notice are insufficient in substance or form."

An appeal was taken in this case to the Supreme Court of the United States, but a majority of that court held that the appeal had been improvidently awarded. It appeared that the appellant had actual knowledge of the registration proceedings in the state courts, and it was held that he was therefore not affected by the provisions of the act of which he complained. In the assignment of error his only complaint of the unconstitutionality of the statute was that it deprived persons of property without due process of law, an objection which no one with actual knowledge of the proceedings could make. Hence the writ of error was dismissed because the plaintiff in error did not have the requisite interest to bring in question the constitutionality of the act, and there was no decision on the merits. Tyler *vs.* Judges, 179 U. S. 405.

It is a noteworthy fact that no other attempt has been made in Massachusetts to question the constitutionality of that act; and, as is well known, the popularity of the act has grown from year to year and its administration has been most successfully conducted. There have been a number of appeals—25 or more from the decisions of the land court on questions of practice—but in none of them has any constitutional question been raised. And the act is so firmly established now in the jurisprudence of Massa-

chusetts that no one imagines it can ever be successfully assailed on constitutional grounds.

5. STATE *vs.* WESTFALL, 85 MINN. 437; 57 L. R. A. 297. FEB. 14, 1902.

This case involved the constitutionality of the Minnesota Land Registration Act of 1901, which was attacked: (1) Because it was special legislation. (2) Because it did not afford due process of law. (3) Because it mixed the powers of government by conferring judicial powers on ministerial officers. (4) Because the examiners of title were appointed instead of being elected. No one of these objections was sustained. In discussing the question of due process of law, the court said:

"It is also contended by the relator that under the provisions of the act a person may be in actual possession of land the title to which is to be registered and service made upon him by publication, which may result in his being registered out of his title thereto without ever having any actual knowledge of the judicial proceeding instituted to secure a decree clearing and quieting a title as a basis for the initial registration. If this be the correct construction of the provisions of the act relating to the service of the summons, they do not constitute due process of law. (Baker *vs.* Kelly, 11 Minn. 480, Gil. 358.) But the act is not reasonably susceptible of such a construction."

And on this subject it was further said:

"Actions and proceedings to conclusively establish rights and titles against all claimants and parties, known and unknown, are not novelties in our jurisprudence, for decrees probating wills, distributing estates of deceased persons, quieting title to real estate against unknown heirs and unknown parties, have been repeatedly held to be conclusive on the whole world. . . . The proceeding provided for by the act in question is . . . . substantially one *in rem*, the subject-matter of which is the state of the title of land within the jurisdiction of the court, and the provisions of the act for serving the summons and giving notice of the pendency of the proceeding are full and complete, and satisfy both the state and federal constitutions. To hold otherwise would be to hold that the courts of this state cannot in any manner acquire jurisdiction to clear and quiet the title to real estate by a decree binding all interests and all persons or parties, known or unknown. . . . That the courts of this state have jurisdiction to so clear and quiet title by their decrees is no longer an open question in this state."

And in concluding the discussion on this branch of the case, it was said:

"If the act is complied with, it is extremely improbable that an adverse claimant in actual possession of the land would fail of receiving notice of the pendency of the proceeding to register the title. However this may be, it is reasonably clear, and we so hold, that the particular provision of the act, which, in effect, forbids the commencement or the defense, in opposition to the decree, of any action or proceeding to recover the land brought more than 60 days after the entry of the decree, does not apply to an adverse claimant in the actual possession of the land, upon whom the summons is not served; for, being in possession, he cannot bring such an action, and his right to defend his possession and title in such a case cannot be made to depend upon his non-action. So construed, the provision of the act, both as to the opening of the decree and as to the commencement of any action or proceeding to recover the land in opposition to the decree, is valid as a statute of limitations. The time limit seems to us to be a short one, but, in view of the complete and far-reaching provisions of the act for notice to all parties, and the fact that the right of appeal as in civil actions is given, we cannot hold that the legislature arbitrarily exercised its discretion in fixing the limit."

With regard to the powers and duties of the registrars it was held:

"The registration is the act of the court. The fact that it may be done by the registrar, under general orders, where there is no question, is not different from the power of the clerk to enter judgment, in cases ripe for judgment, under the general order or rule of the court."

6. National Bond Co. *vs.* Hopkins, 96 Minn. 119. Oct. 27, 1905.

In discussing Sec. 13 of the Minnesota Act, the court said:

"Its constitutionality is not to be determined independently, but rests upon the validity of the law as a whole. It is a mere branch of the tree, and depends for support upon the soundness of the trunk and the roots of the tree itself. The law itself being constitutional, this subordinate part is constitutional."

7. Robinson *vs.* Kerrigan, 151 Cal. 41. April, 1907.

This case arose on application for a writ of mandate to the Superior Court of the City and County of San Francisco and to

Frank H. Kerrigan, the judge thereof, to compel the hearing of petition for registration under the California Act of March 17, 1897, known as the Torrens Law. Judge Kerrigan had refused to enter a petition for registering land under the act on the ground that the act was unconstitutional. Hence the validity of the whole act was involved, and the following objections were considered and discussed: (1) In replying to the suggestion that the act did not afford due process of law, the court said:

"The proceeding is in all important particulars of similar character to that provided by the act of 1906, known as the 'McEnerney Act.' Title & Document Restoration Co. *vs.* Kerrigan, 150 Cal. 289, construing the 'McEnerney Act' is a 'full answer to the objection that the Torrens Law does not provide for due process of law, nor afford to all persons the equal protection of the law.' . . . The state has full control over the subject of the mode of transferring and establishing titles to property within its limits. For these purposes the state has power to provide a special proceeding, in the nature of a proceeding *in rem*, to fix the status of the land and declare the nature of the titles and interests therein and the person or persons in whom such titles and interests are at any time vested. It may do this whenever it may be considered necessary or likely to promote the general welfare. (Arndt *vs.* Griggs, 134 U. S. 321; People *vs.* Simon, 176 Ill. 165; Hamilton *vs.* Brown, 161 U. S. 256.)"

(2) And in replying to the novel suggestion that the proceedings under the act were not judicial, this objection being based on the theory that there is or may be no adverse party, and hence that the proceeding is not adversary in character, the court said:

"It needs no citation of authority to establish the proposition that the power of the court to entertain an action does not depend upon the appearance of the defendant and his active opposition to the claim of the plaintiff. . . . The contention is further made in this connection, that judicial power can be exercised only to settle existing disputes and controversies, and that, if none exist, the act of merely describing and declaring an undisputed title is necessarily administrative and cannot be performed by the judicial department. . . . Whether or not this is strictly an exercise of judicial power, as originally constituted, it cannot be denied that it is a power of the class which, from time immemorial, has been committed to and exercised by the courts."

(3) In replying to the suggestion that the act conferred judicial powers on the registrar it said:

"There is no force to the objection. Every administrative officer is frequently called upon, in the discharge of his duties, to decide questions of law relating thereto. Recorders determine between deeds, leases, mortgages, etc., before recording. The sheriff determines, for his own guidance, ownership of property before levying. The duties required of the registrar by these sections are of the same nature. His decision in the matter is not conclusive. If he decides wrongfully and refuses to perform the appropriate duty in the premises, he may be compelled to act properly by means of a writ of mandamus, the same as any other ministerial officer who mistakes his duty under the law and refuses to perform it."

(4) In replying to the objection that the act was special, because it makes special provisions regarding the statute of limitations, the court curtly said:

"We perceive no merit in this contention."

(5) In replying to the suggestion that the act was unconstitutional because its title was insufficient, it was said:

"The same criticism might be made of many acts on a general subject which have always been considered as valid. . . . If it were necessary to mention every subdivision of the general subject of an act in the title to the extent here claimed, our statutes would present a somewhat ludicrous appearance. The statement of the subject in the title would generally occupy almost as much space as the act itself. Furthermore, if subjects, as intended by the Constitution, must be so minutely subdivided, it would be impracticable to enact any comprehensive law on any general subject, by reason of the necessity of dividing it into so many separate acts. The provision must receive, and it has received, a more liberal construction."

8. PEOPLE *vs.* CRISSMAN, 41 COLO. 450. SEPT., 1907.

In this case the Colorado Registration Act was assailed: (1) Because its title was not sufficient. (2) Because it did not afford due process of law. (3) Upon the ground that it devolved executive duties upon the court, a suggestion which reverses the usual objection that such acts confer judicial powers on the registrars. (4) That the act created new officers, contrary to the Constitution. All these objections were overruled by the court, and the act was held to be constitutional. One of the arguments used against the provisions of this act was, that the

Frank H. Kerrigan, the judge thereof, to compel the hearing of petition for registration under the California Act of March 17, 1897, known as the Torrens Law. Judge Kerrigan had refused to enter a petition for registering land under the act on the ground that the act was unconstitutional. Hence the validity of the whole act was involved, and the following objections were considered and discussed: (1) In replying to the suggestion that the act did not afford due process of law, the court said:

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(2) And in replying to the novel suggestion that the proceedings under the act were not judicial, this objection being based on the theory that there is or may be no adverse party, and hence that the proceeding is not adversary in character, the court said:

"It needs no citation of authority to establish the proposition that the power of the court to entertain an action does not depend upon the appearance of the defendant and his active opposition to the claim of the plaintiff. . . . The contention is further made in this connection, that judicial power can be exercised only to settle existing disputes and controversies, and that, if none exist, the act of merely describing and declaring an undisputed title is necessarily administrative and cannot be performed by the judicial department. . . . Whether or not this is strictly an exercise of judicial power, as originally constituted, it cannot be denied that it is a power of the class which, from time immemorial, has been committed to and exercised by the courts."

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"We perceive no merit in this contention."

(5) In replying to the suggestion that the act was unconstitutional because its title was insufficient, it was said:

"The same criticism might be made of many acts on a general subject which have always been considered as valid. . . . If it were necessary to mention every subdivision of the general subject of an act in the title to the extent here claimed, our statutes would present a somewhat ludicrous appearance. The statement of the subject in the title would generally occupy almost as much space as the act itself. Furthermore, if subjects, as intended by the Constitution, must be so minutely subdivided, it would be impracticable to enact any comprehensive law on any general subject, by reason of the necessity of dividing it into so many separate acts. The provision must receive, and it has received, a more liberal construction."

8. PEOPLE *vs.* CRISSMAN, 41 COLO. 450. SEPT., 1907.

In this case the Colorado Registration Act was assailed: (1) Because its title was not sufficient. (2) Because it did not afford due process of law. (3) Upon the ground that it devolved executive duties upon the court, a suggestion which reverses the usual objection that such acts confer judicial powers on the registrars. (4) That the act created new officers, contrary to the Constitution. All these objections were overruled by the court, and the act was held to be constitutional. One of the arguments used against the provisions of this act was, that the

plaintiff's case was partially tried and disposed of by the court before persons adversely interested were brought into court and made parties. This objection was based upon the powers and duties conferred on the examiners of title, but it was answered by a reference to Sec. 23 of the act which expressly provides that "The court shall not be bound by the report of the examiners of title, but may require other or further proof." In answer to the objection that the act was unconstitutional because no judgment or decree could be rendered or entered in favor of a defendant, regardless of the showing he might make, the court said:

"The act does accord to all persons equal rights and privileges. Any one desiring to avail himself of its terms can do so by filing his application, and can obtain the registration of his title by complying with the requirements of the statute. Although the legislature has seen fit to allow affirmative relief only to the applicant who initiates the proceeding, this does not render the proceeding objectionable for the reason assigned. The right to a particular remedy is not a vested right. Every state has complete control over the remedies which it offers to suitors in its courts."

And in reply to the suggestion that the act created new officers without authority, the court said:

"It was clearly within the province of the legislature to impose upon the clerk in his capacity of recorder of deeds the duties enjoined upon him by this statute. Making him registrar of titles does not constitute him a new county officer."

9. McMahon *vs.* Rowley, 238 Ill. 31. Feb., 1909.

This was a case in which the Illinois Registration Act was attacked as unconstitutional on account of the provisions of Secs. 10 and 18, but the effort failed and the court said in reference to the objection to Sec. 10:

"The general features of the Registration Act were held constitutional by this court in People *vs.* Simon, 176 Ill. 165. Plaintiffs in error are in no condition to raise the constitutionality of this section."

10. Brooke *vs.* Glos, 243 Ill. 392. Feb., 1910.

In this case Sec. 18 of the Illinois Act as amended in 1907 was sustained against objections to its constitutionality.

This section, which has been frequently attacked, provides that the examiner may receive in evidence any abstract of title,

or certified copy thereof, issued in the ordinary course of business by makers of abstracts; but that the same shall not be held as more than *prima facie* evidence of title, and any part or parts thereof may be controverted by other competent proofs. The section then defines what shall be sufficient proof that any original abstract of title was made or issued in the ordinary course of business by makers of abstracts. It will thus seem that the section relates to local conditions in Cook County due to the great Chicago fire.

11. WAUGH *vs.* GLOS, 246 ILL. 604. OCT., 1910.

In this suit the Illinois Act was attacked as unconstitutional because contrary to the Illinois Constitution, Art. II, Sec. 29, requiring all laws relating to courts to be general and of uniform operation. But the objection was overruled, and the court said:

"The Torrens system of registration of land titles is different from the prevalent method of recording; the manner of bringing lands under such system must be provided by statute; the proceeding is of a different nature from the ordinary action at law or suit in chancery; and we cannot say that the legislature acted unreasonably in providing for a rule of evidence applicable to the proceeding without extending it to all other forms of action in which the title to real estate is involved."

12. HAMMOND *vs.* GLOS, 250 ILL. 32. APRIL, 1911.

Strange to say, it appears to have been admitted by appellants in this suit that the Illinois Act, or certainly the 18th section thereof, is constitutional, as we learn from this expression in the opinion of the court:

"The appellants concede that this court has held the Torrens Law, as amended, constitutional, and make no contention on that branch of the case. (Waugh *vs.* Glos, 246 Ill. 604; Culver *vs.* Waters, 248 Ill. 163.)"

13. PETERS *vs.* DULUTH, 119 MINN. 96. JULY, 1912.

In this case the Minnesota Registration Act was attacked as unconstitutional: (1) Because it does not provide for jury trial. (2) Because it does not provide for a trial on the merits. (3)

Because it authorizes a dismissal of the application for registration contrary to Art. I, Sec. 8 of the Minnesota Constitution. None of these objections was sustained. The case contains a condensed history of Torrens Laws and a fine general discussion of registration acts. Any one who is interested will be richly repaid by a full reading of the opinion. It declares that Torrens Laws have the general purpose to clear up and settle land titles, and takes the view that they are nothing more than an enlargement of the remedy to quiet title. Hence there is no constitutional right to a jury trial in Minnesota under Art. I, Sec. 4, which says: "The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount of controversy." In disposing of this point the court said:

"There was no such right upon the ancient bill to remove cloud and quiet title, and it has been held in this state that the constitutional guaranty does not apply thereto. (Yanish *vs.* Pioneer Co., 64 Minn. 175.)"

In this appeal it was held that a party not in possession may bring suit for registration of title against a party who is in possession, the court saying in this connection:

"The purpose of the statute is to provide a speedy and summary remedy to clear up title to land. (Reed *vs.* Siddall, 94 Minn. 216.) The remedy provided is not a substitute for an action of ejectment. . . . Moreover, the relief in ejectment is not coextensive with that which may be had upon an application to register . . . . it needs no argument to show that a title could never, in ejectment, be settled as against the whole world, as can be done upon an application to register."

14. TOWER *vs.* GLOS, 256 ILL. 121. DEC. 5, 1912.

In this case the constitutionality of Sec. 18 of the Illinois Act was again upheld. And it was further decided that the act was not unconstitutional as a local law, because only yet adopted by Cook County.

15. AMERICAN LAND CO. *vs.* ZEISS, 219 U. S. 44. DEC. 19, 1910.

In this case the constitutionality of what is known as the "McEnerney Act" in California was upheld. The provisions of this act with regard to service of process or notice, and the con-

clusiveness of the proceeding against all the world, are more extreme than any to be found in the land registration acts. The action is commenced by the filing of a verified complaint, and the defendants are required to be described as " All persons claiming any interest in, or lien upon, the real property herein described, or any part thereof." The purpose of the act is to permit any person who claims an estate of inheritance or for life in any real property, in which he is in the actual and peaceable possession, in person or by tenant or other person holding under him, to bring and maintain an action *in rem* against all the world, to establish his title to such property and determine all adverse claims thereto. An affidavit is to be filed with the complaint describing the estate claimed by the plaintiff, stating whether or not he has ever made any conveyance of the property, mentioning any liens thereon, and giving the name and address of any person known or reputed to have any adverse claim. If the affidavit discloses the name of any person having adverse claim, summons is to be personally served upon him if he can be found within the state, together with a copy of the complaint and affidavit with a memorandum of its publication. This summons is to be published in a newspaper of general circulation published in the county in which the land is situate once a week for a period of two months and is to contain a memorandum of the names and addresses of persons said to have any adverse claim. A copy of the summons and memoranda therewith is also to be posted in a conspicuous place on each parcel of the property described in the complaint within 15 days after the first publication of the summons. Any person may appear and make himself a party to the action within three months after the first publication of the summons, or within such further time not exceeding 30 days, as the court may, for good cause, grant. At the time of filing the complaint a *lis pendens* notice is also to be recorded in the office of the recorder of the county in which the land is situated. Under this act Zeiss, being a tenant for the unexpired term of a lease for 99 years, due to expire on Mar. 26, 1950, on Dec. 19, 1906, obtained a decree establishing in himself the fee simple title to two lots of land in San Francisco. Subsequently the American Land Co. filed

its bill in equity claiming to be the owner of the fee and asking for the removal of cloud from its title due to the aforesaid decree in favor of Zeiss, and praying that its title to the property might be quieted. The affidavit filed by Zeiss conformed to the requirements of the McEnerney Act, but contained no averment that an inquiry of any kind had been made to ascertain whether any adverse claim really existed. In its suit in chancery, the American Land Co. alleged that neither it nor its grantors received any notice of the pendency of the action by Zeiss under the McEnerney Act, nor did they know of the existence of the decree in his favor until more than a year after its entry, although they were at all times citizens and residents of California, not seeking to evade, but ready to accept service of summons and easily reached for that purpose; but no service was made upon them. In the lower court, the bill in equity was dismissed on demurrer, and this decree was affirmed on appeal. Mr. Chief Justice White delivered the undivided opinion of the court, in the course of which he discussed: (1) The power of the state to control land titles under statutory proceedings. (2) The sufficiency of the safeguards provided in the statute in question. (3) The adequacy of the proceedings had in the particular cause. In the course of his opinion, he said:

"As it is indisputable that the general welfare of society is involved in the security of the titles to real estate and in the public registry of such titles, it is obvious that the power to legislate as to such subjects inheres in the very nature of government. . . . That a state has the power, generally speaking, to provide for and protect individual rights to the soil within its confines, and declare what shall form a cloud on the title to such soil, was recognized in Clark *vs.* Smith, 13 Pet. 195. So, also, it is conclusively established that when the public interests demand, the law may require even a party in actual possession of land, and claiming a perfect title, to appear before a properly constituted tribunal, and establish that title by a judicial proceeding."

After quoting from Arndt *vs.* Griggs, 134 U. S. 316, as to the right of a state to conclude non-residents by publication of notice, the chief justice continued: "Manifestly, under circumstances like those here presented, the principle applies with equal force in the case of unknown claimants. Undisclosed and unknown

claimants are, to say the least, as dangerous to the stability of titles as other classes." The unknown claimants here referred to were unknown resident claimants; and the court then cited with approval Hamilton *vs.* Brown, 161 U. S. 256, and Bertrand *vs.* Taylor, 87 Ill. 235, and Title & Document Restoration Co. *vs.* Kerrigan, 150 Cal. 258. From the case last mentioned this quotation was made:

"Applying the principles which have led the courts in cases like Arndt *vs.* Griggs and Perkins *vs.* Wakeham, 86 Cal. 580, 21 Am. St. Rep. 67, 25 Pac. 51, to sustain judgments quieting titles against non-residents upon substituted service, why should not the legislature have power to give similar effect to such judgments against unknown claimants where the notice is reasonably full and complete? The validity of such judgments against known residents is based upon the grounds that the state has power to provide for the determination of titles to real estate within its borders, and that, as against non-resident defendants or others, who cannot be served in the state, a substituted service is permissible, as being the only service possible. These grounds apply with equal force to unknown claimants. The power of the state as to titles should not be limited to settling them as against persons named. In order to exercise this power to its fullest extent, it is necessary that it should be made to operate on all interests, known and unknown."

And so the conclusion unhesitatingly reached was, that the legislature of California was clearly within its rights in passing the McEnerney Act.

The court likewise had no difficulty in determining that the safeguards provided by the statute were sufficient, and on this point, the chief justice said:

"To argue that the provisions of the statute are repugnant to the due process clause because a case may be conceived where rights in and to property would be adversely affected without notice being actually conveyed by the proceedings, is in effect to deny the power of the state to deal with the subject. The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals."

This clear expression effectually dispels the mists and fogs and vague suggestions of ghostly dread with which the opponents of land registration have endeavored to overwhelm the proponents

of the system, and should hereafter confine to undisturbed graves the spooks with which it has been so persistently attempted to terrorize a sensitive public. In point of fact, in the practical operation of land registration, none of the terrible predictions of its opponents has been verified. If called upon to file as an exhibit with their complaint a single "true owner" who has been robbed of his land by any of the land registration acts in the United States, these complainants would be compelled to confess the difficulty or impossibility of the task. Said the chief justice:

"These views dispose of all the contentions concerning the repugnancy of the statute to the 14th Amendment which we think it necessary to separately consider. In saying this we are not unmindful of a multitude of subordinate propositions pressed in the voluminous brief of counsel, and which were all in effect urged upon the Supreme Court of California in the Kerrigan and Hoffman cases, and were in those cases adversely disposed of, and which we also find to be without merit."

And without going further into this subject we are content simply to register our concurrence with the Supreme Court of the United States.

It is evident from this review of the cases that every conceivable line of attack which could commend itself to the critics and enemies of land registration, has been followed and pressed to a conclusion both in the state and federal courts. In reviewing the decisions one is struck by the ingenuity no less than the persistency of counsel in raising every objection likely to command the action of the courts. Nor have these attacks been confined to the courts, but no effort has been spared to convince every legislature which has taken up the subject, of the dangers of such legislation not only from a constitutional but from a practical point of view. Every act passed in the United States bears on its face the scars of desperate conflict. It is doubtful whether any legislation has ever been assailed with more bitterness or greater persistency than this; and unfortunately its antagonists have generally succeeded in marring the act even when they have been unable to defeat it. This Conference can render very high service to the whole country by guiding and moulding new legislation which is sure to follow, even if it should not be able to induce the states

which have already passed land registration acts to adopt a uniform act.

The effect of the decisions reviewed herein which bear directly upon the constitutionality of the various title registration acts, is greatly heightened when we consider the numerous other cases bearing on these acts in which no constitutional question was raised. A large number, if not all of these cases, will be found mentioned in the notes to the Uniform Act submitted herewith, to which we invite the careful and studious attention of the Conference.

EUGENE C. MASSIE, *Chairman,*
ROME G. BROWN,
AUSTIN V. CANNON.

The Conference of the Commissioners on Uniform State Laws, after some discussion, made an appropriation for the cost of printing the draft statute reported by the committee.

III.

REPORT

OF THE

COMMITTEE ON UNIFORMITY OF JUDICIAL DECISIONS IN CASES ARISING UNDER UNIFORM LAWS.

MADE TO THE CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AT ITS WASHINGTON MEETING IN 1914.

At the meeting of the Commissioners held at Montreal in 1913 it was recognized that the legislative action in the passage of uniform statutes was of little or no avail without the hearty co-operation of the courts in the way of a uniform interpretation and construction of such statutes, and that such end would be best promoted by giving to the courts such assistance as might be possible. This it was attempted to do by the appointment of this committee. Finding an apparent lack of recognition of such statutes upon the part of both the profession and the courts, it was felt that our work could be best performed by placing at the disposal, without cost, of the various courts of last resort information as to all adjudicated cases in any way bearing upon any particular section or sections of the uniform statutes. The compilation and proper arrangement of such information necessarily involved much time and labor, but in the case of the Negotiable Instruments statutes this work was greatly facilitated by the work which had already been done by the Chairman of this committee. The abstracts which had been prepared by him were typewritten on cards, in duplicate, the two being placed in different cities so as to avoid any possibility of the loss by fire, and on the 15th of November a circular letter was sent out to each judge of a federal court and of the courts of last resort in the several states, directing attention to the importance of such uniform action upon the part of the courts. A copy of that letter is appended to this report as an exhibit. This letter was followed up a month later by a second letter, again directing attention to the matter, and advising them of our readiness, beginning on January 1, 1914, to give full lists of references to the adjudicated

cases under any section of the Negotiable Instruments Statute. A copy of this second letter is also attached hereto. It was not to have been expected that at the outset any considerable number of the judiciary would avail themselves of the proffered assistance, but in several of the states the judges at once recognized a means of aid to them in their work, and in the period which has elapsed since the issuance of these letters information has been requested from the states of Iowa, Missouri, Washington, Alabama, North Carolina, Massachusetts and Illinois, so that the committee feels justified in believing that it has inaugurated a method which will tend to promote the end for which it was created.

It early became evident that it was necessary to prepare comparative tables showing the corresponding section numbers of the same provisions in each of the states, as oftentimes the questions were asked with reference to the numeration in the compiled laws of the writer's own state, and these frequently did not correspond with the numeration of the act as submitted by the Commissioners for adoption, in addition to which, in some of the states, a section might have been divided into several sections, while in other states two sections, as drafted, were combined in one, and in a few cases there had been slight local modifications of the acts. This tabulating work has now been completed, while that of collating the decisions upon the other uniform statutes is in progress, and the committee hopes at an early date to be able to announce its readiness to furnish a reference to all decisions under any of the uniform statutes. The heaviest labor is inevitably in starting and systematizing such a work as the committee has undertaken, but when once begun the maintenance of it will be comparatively simple, and the possibilities which open up for practical usefulness in the furtherance of the uniformity of the law will be fully appreciated by all the members of the commission.

Let us imagine an instance of a new statute by Congress, under which cases soon arise in the federal courts of the country. Suppose that in more than one-third of the cases thus arising the judges ignore the statute, and, so far as the reports show, so do the counsel on both sides. Suppose that in all these cases in which

the new law governs, but is ignored, the opinions of the courts are based upon the old text books, old cases, and sometimes on the general principles of the law embraced by the new statute and sometimes upon old decisions in each court's particular jurisdiction. Suppose the courts go on, year after year, deciding cases under the new statute in this way, and that even in the few opinions that enter into an examination of decisions or opinions in other federal jurisdictions, but few cite decisions in other federal courts, arising under the new statute, but rely principally upon decisions in their own particular circuit or district before the new statute was enacted, and that none make exhaustive examination of the cases in other jurisdictions under the same law. It is easy to see that under such juristic treatment there would be no uniform development of a set of new precedents, of cases decided under the new statute, and sometimes there would be a lack of harmony among the decisions and sometimes there would be a lack of compliance with the provisions of the new statute.

Now this is just what has happened and is continuing to happen in regard to cases that have arisen in the courts of the states and other jurisdictions of the United States that have adopted the Uniform Negotiable Instruments Law, drafted by the Conference of Commissioners on Uniform State Legislation in 1896.

In a few instances, comparatively, there has been ample recognition by the courts of the aim sought to be accomplished by this new statute with citation and examinations of the sections thereof in point, and of the decisions thereunder in other jurisdictions of cases under the same uniform law. See, for instance, the following cases:

Brewster *vs.* Shrader, 26 Misc. N. Y. 480, 1899:

At p. 482—"The language of this section, when given its usual and ordinary signification, ought to leave no room for doubt upon the subject. There is, however, such a universal disposition among lawyers to look for some hidden or subtle meaning in the most simple language that it has become quite the fashion to require the courts to construe statutes which, to the average lay mind, seem to require no construction.

"If the language of the section under consideration were not obviously clear and unequivocal, and there were need of ascertaining the legislative intent in order to give proper effect to such

language, the history of the subject, of the judicial decisions in England and the states of this country, and of the proceedings of the Commission on Uniformity of Laws leave no possible doubt as to the purpose of this section. It is a fact known to every lawyer that the diversity of laws and judicial decisions which obtains in the several states of our union is a source of great inconvenience in practice and a standing menace to the proper administration of justice. So apparent has this evil become that many of the states have taken steps to secure, if possible, a uniformity in those laws in which all have a common interest."

At p. 485 there is a condensed history of the origin of the Conference of Commissioners on Uniform State Laws, of their drafting the Negotiable Instruments Law and of its adoption by different states.

Wirt *vs.* Stubblefield, 17 App. C. (D. C.) 283, 1900:

At p. 287—"We know the origin and history of the act of Congress (meaning the Uniform Negotiable Instruments Law). We know it is largely derived, in its form and provisions, from the English act upon the subject and we know, moreover, that the great and leading object of the act, not only with Congress, but with the large number of the principal commercial states of the union that have adopted it, has been to establish a uniform system of law to govern negotiable instruments wherever they might circulate or be negotiated. It was not only uniformity of the rules and principles that was designed, but to embody in a codified form, as fully as possible, all the law upon the subject, to avoid conflict of decisions and the effect of mere local laws and usages that had heretofore prevailed. The great object sought to be accomplished by the enactment of the statute was to free the negotiable instrument, as far as possible, from all latent or local infirmities that would otherwise inhere in it, to the prejudice and disappointment of innocent holders, as against all the parties to the instrument professedly bound thereby."

Baltimore & Ohio Railroad Co. *vs.* First National Bank of Alexandria, 102 Va. 753, 1904:

At p. 757—"This opinion might be greatly prolonged by citation of conflicting cases and a discussion of the discordant views entertained by courts and text writers of the greatest ability upon these questions: but the object, as we understand it, of the codification of the law with respect to negotiable instruments was to relieve courts of this duty, and to render certain and unambiguous that which had theretofore been doubtful and obscure, so that

the business of the commercial world, largely transacted through the agency of negotiable paper, might be conducted in obedience to a written law emanating from a source whose authority admits of no question."

Trustees of American Bank of Orange *vs.* McComb, 105 Va. 473, 1906:

At p. 476—"The object of the act (meaning the Uniform Negotiable Instruments Law), as stated in its title, was 'to revise, arrange and consolidate into one act the laws relating to negotiable instruments' (being an act to establish a law uniform with the laws of other states on the subject).

"The history of that legislation, as well as the act itself, shows that it was the intention of the legislature to embody in one act not merely the statute law of the state with reference to negotiable instruments, but also the rules of the 'Law Merchant' to codify generally the law on the subject. . . . . Where a statute is intended to embody in a code a particular branch of the law and has specifically dealt with any point, the law on that point should be ascertained by interpreting the language used, instead of doing as before the statute was passed . . . . roaming over a vast number of authorities in order to discover what the law is by extracting it by a minute, critical examination of prior decisions. (Lord Bramwell in Bank, etc., *vs.* Vagliano, L. R. Appeal Cases, 107, 144.) If such a statute is to be treated as the defendant insists should be done, and have read into it the law prior to its enactment, the value of codifying the law on the subject of negotiable instruments will be greatly impaired, if not destroyed, and the very object for which it was enacted will be frustrated.

"Where the language of such an act is clear it must control whatever may have been the prior statutes and decisions on the subject. Where there is a substantial doubt as to the meaning of the language used, the old law is a valuable source of information. (U. S. *vs.* Bowen, 100 U. S. 508, 25 L. Ed. 631; Bank *vs.* Vagliano, *supra.*)"

Dollar Savings Bank *vs.* Barberton Pottery Co., 17 Ohio Decs. 539, 1907:

At p. 549—"The primary purpose of the adoption of the Negotiable Instruments Code was to obtain uniformity of decisions where before there was great diversity. The state legislatures having enacted the code in the identical language of each other, it would be unfortunate, indeed fatal to such uniformity, if the courts, under the pretext of judicial interpretation or construction, were so to vary and violate the plain provisions of the code as to undo and overthrow the very purpose of the code."

Vander Ploeg *vs.* Van Zuuk, 135 Iowa 350, 12 N. W. 807, 1907:

At p. 357—"But we must take the Negotiable Instruments Act as it is written, and, while the general purpose was to preserve the existing law so far as it was uniform, yet in many respects in which there was a conflicting doubt under the authorities, the language of the statute lays down rules which are not to be ignored simply because in some respects a change in the law is effected."

Rockfield *vs.* The First National Bank, 77 Ohio St. 311; 83 N. E. 392, 1907:

At p. 329—"It is so much a matter of common knowledge as to make it proper to take judicial notice of the fact that the act herein considered was enacted because of an effort on the part of the members of many, if not all, of the states of the union to bring about a uniform system of law respecting negotiable instruments. In a substantial measure the effort has been successful. . . . .

"It is manifest that one prominent motive leading to their enactment was desiring to establish a uniform law on the subject of negotiable instruments. And wherever these acts have received judicial interpretation in the several states this purpose has been recognized.

"That this purpose was prominent in the minds of the members of our General Assembly in the enactment of the Ohio act is shown by the title of the act itself, which is, 'an act to establish a law uniform with the laws of other states on negotiable instruments.'

"The desirability of such legislation had been long felt by commercial people of our state as well as by the judiciary and the Bar at large."

Columbia Banking Co. *vs.* Bowen, 134 Wash. 218; 114 N. W. 451, 1908:

At p. 221—"Such statute was enacted for the purpose of furnishing, in itself, a certain guide for the determination of all questions covered thereby relating to commercial paper, and therefore, so far as it speaks without ambiguity as to any such question, reference to case law as it existed prior to the enactment is unnecessary and is liable to be misleading.

"The Negotiable Instruments Law is not merely a legislative codification of judicial rules previously existing in this state making that written law which was before unwritten. It is, so far as it goes, an incorporation into written law of the common law of the state, so to sepak, the 'Law Merchant' generally as recognized, with such changes or modifications and additions as to make a system harmonizing, so far as practicable, with that prevailing in other states."

Walker *vs.* Dunham, 135 Mo. 396, 1909:

At p. 396—"In all of them (meaning the appellate courts of other states that have adopted the uniform law) it is recognized that the one prominent motive which led to the enactment of this law was the desire to establish a uniform law on the subject of negotiable instruments throughout the United States.

"Wherever these acts have received judicial interpretation this purpose has been recognized, in fact, that purpose is set forth in the very title of the act itself. It is stated to be 'to establish and codify the law concerning negotiable instruments and to establish a law uniform with that of other states on the subject.'"

First National Bank of Shawano *vs.* Miller, 139 Wis. 126; 129 N. W. 820, 1909:

At p. 128—"In all situations where the Negotiable Instruments Law passed in 1889 conflicts with our adjudications, as to instruments made subsequent to that time, the former rules.

"When the Negotiable Instruments Law was enacted a conflict of judicial authority on the subject in hand and others existed. In some states a clause similar to that here was held to render the amount payable on the instrument uncertain and to destroy its negotiability. In many other states the obligation as to the costs of collection was held to be contingent upon collection after dishonor, to appertain to the remedy for a breach of the primary contract, not to the debt itself, and, therefore, not to render the amount uncertain, militating against negotiability. To supersede the conflict by a general rule the provision of the Negotiable Instruments Statute quoted was incorporated therein."

Wisner *vs.* First National Bank of Gallitzin, 220 Pa. 21, 68 Atl. 955, 1909:

At p. 25—"Within the last few years the legislatures of several of the states have codified the law on the subject of negotiable instruments. Some of the provisions of the several statutes are simply declaratory of the existing law, while others have altered or changed the law as heretofore declared. The purpose of the legislation is to produce uniformity on the subject among the several states, and to make certain and definite by statute the rules of the law governing negotiable paper. . . . .

"In view of the rulings in some of the decisions interpreting the Negotiable Instruments Law, however, it may not be inappropriate to note the suggestions in the address of the learned president of the Fourteenth Annual Conference of the Commissioners of Uniform State Law. He said, 'However clear the statute (the

Negotiable Instruments Law), there is an unfortunate tendency of the courts to fall back to the old cases.' "

Campbell *vs.* Fourth National Bank of Cincinnati, Ohio, 137 Ky. 555; 126 S. W. 114, 1910:

At p. 561—" The Negotiable Instruments Act is in the main merely a codification of the common-law rules on the subject to which it relates. It was intended principally to simplify the matter by declaring the rule as established by the weight of authority. There are few innovations in the 'Law Merchant' as before settled by the courts. Where it lays down a new rule, it controls, but where its language is consistent with the rule previously recognized, it must be construed as simply declaratory of the law as it was before the adoption of the act."

National Bank of Rolla *vs.* First National Bank of Salem, 141 Mo. App. 730, 1910:

At p. 730—" The adoption in this and other states of our Negotiable Instruments Law was for the purpose of having in the statutory laws of the states a uniform law in regard to commercial paper. A confusion was known to exist on many of the every-day transactions concerning such paper, and it may be said that there was no question upon which the courts are more in conflict than upon the question involved in this case."

Mechanic's & Farmer's Savings Bank *vs.* Katterjohn, 137 Ky. 427; 125 S. W. 1071, 1910:

At p. 431—" However the rule may have been prior to the new Negotiable Instrument Act (Acts 1904, c. 102), we now regard the question as finally determined by its provisions. That act is now in force in a majority of the states of this country. It resulted from the concerted efforts on the part of Bar associations, commercial clubs, bankers' associations and the citizens generally, to secure uniformity in the law relating to negotiable instruments. Prior to the adoption of this act by the various states in which it is in force there was a great lack of uniformity in the statutes of those states and in decisions of the courts with reference to the 'Law Merchant.' A merchant engaged in business in one state, and doing business with citizens of other states, would frequently find that a note which was negotiable under the law of his domicile was, in fact, non-negotiable at the place where it was executed or was to be paid.

" This led to great confusion in the conduct of commercial affairs. To obviate this difficulty the Negotiable Instruments Act was passed by the legislatures of several states. The provisions

of these various acts are substantially the same, and we take it that these should be construed so as to maintain, as far as possible, the idea of uniformity. Our conclusion then is that where the Negotiable Instruments Act speaks, it controls, where it is silent, resort must be had to the 'Law Merchant' or the common law regulating commercial paper."

National Bank of Commerce in St. Louis *vs.* Mechanics' American National Bank and St. Louis Brewing Association, 148 Mo. App. 15, 1910:

At p. 15—"All acts in connection with these checks are, therefore, to be construed and the character and rights of the parties to them are determinable under the provisions of the Negotiable Instrument Act of this state, provided they are such as are covered by it. We call attention to this for the reason that all of the counsel in the case seem to have lost sight of it, one of them even stating that at the time of the transaction the common law, meaning 'Law Merchant,' then obtained in this state and that that law is to be applied in the determination of the questions arising in this case. We do not think so; on the contrary, we think that this whole transaction falls within our Negotiable Instruments Law of 1905."

Lumberman's National Bank *vs.* Campbell, 61 Or. 123, 1912:

At p. 131—"The act from which these excerpts are taken was designed to harmonize the decisions of courts of last resort in respect to commercial paper, and to give to negotiable instruments a degree of certainty that would be universal in its application in the states enacting the law."

State Bank of Halsted *vs.* Bilstad, — Iowa; 136 N. W. 204, 1912:

At p. 205—"The primary purpose of the several states that have adopted the Negotiable Instruments Act has been to establish a uniform rule of law covering such instruments and embodying in a codified form, as fully as possible, the previous law on the subject, to the end that the negotiable character of commercial paper might not be destroyed by local laws and conflicting decisions, and this subject should be kept in mind in construing the various provisions of the act."

Brophy Grocery Co. *vs.* Wilson, 45 Mont. 489, 1912:

At p. —"By the enactment of the Negotiable Instruments Law (Laws 1903, chap. 121; Rev. Code, secs. 5842-6037) the legislature intended to cover the whole subject of negotiable instruments and thus to set at rest questions touching the rights of the

parties which had theretofore been left to be determined by a critical examination of the prior decisions of the courts. (American Bank *vs.* McComb, 105 Va. 473; 54 S. E. 14.) In as far as its provisions are clear and unambiguous, they must control."

Union Trust Co. *vs.* McGinty, 212 Mass. 205; 98 N. E. 679, 1912:

At p. 206—"It is matter of common knowledge that the Negotiable Instruments Act was drafted for the purpose of codifying the law upon the subject of negotiable instruments and making it uniform throughout the country through adoption by the legislatures of the several states and by the Congress of the United States. The design was to obliterate state lines as to the law governing instrumentalities so vital to the conduct of interstate commerce as promissory notes and bills of exchange, to remove the confusion or uncertainty which might arise from conflict of statutes or judicial decisions among the several states, and to make plain, certain and general the controlling rules of law. Diversity was to be moulded into uniformity. This act in substance has been adopted by many states. While it does not cover the whole field of negotiable instruments law, it is decisive as to all matters comprehended within its terms. It ought to be interpreted in such a way as to give effect to the beneficent design of the Legislature in passing an act for the promotion of harmony upon an important branch of the law. Simplicity and clearness are ends especially to be sought. The language of the act is to be construed with reference to the object to be obtained. Its words are to be given their natural and common meaning, and prevailing principles of statutory interpretation are to be employed. Care should be taken to adhere as closely as possible to the obvious meaning of the act, without resort to that which had theretofore been the law of this commonwealth, unless necessary to dissolve obscurity or doubt, especially in instances where there was a difference in the law in the different states."

Cherokee National Bank *vs.* Union Tr. Co., 33 Okla. 342, 1912:

(After citing many of the cases to the above effect.)—"That the foregoing excerpt states the chief purpose of the Negotiable Instruments Law is familiar knowledge to the courts and the Bar. Of course it is fundamental that the court of no state in which the law is enacted is bound by the construction of the statute by the courts of other states; but courts, with full knowledge of the history of this legislation, and knowing that its chief purpose is as stated above, should, we think, upon all questions of construction, where the rule adopted by other states is not plainly erro-

neous, be disposed to follow the construction given to the act by the courts of the states in which the act has heretofore been adopted and construed; and particularly should this be true where the statute involves a question upon which the authorities, independent of statute, are so greatly divided as they are upon the question presented in the case at Bar, for by no other course may uniformity be obtained; and if the statute, thus construed, works a hardship in any locality, it may be corrected by legislation."

Broderick & Bascon Rope Co. *vs.* McGrath, 142 N. Y. Supp. 497, 1913:

"The desirability of uniformity in the laws of various states with reference to negotiable instruments is so obvious, and the legislative intent to harmonize our theretofore conflicting decisions with those of other jurisdictions is, to my mind, so clearly expressed that full effect should be given thereto."

Windsor Cement Co. *vs.* Thompson, 86 Conn. 511, 1913:

At p. 514—"But the plaintiff, under its complaint, was not entitled to judgment unless the order sued upon is a bill of exchange. As it is not payable to order or bearer, it is not within the definition of a bill of exchange found in the Negotiable Instruments Act, General Statutes, 4296. Before the passage of that act non-negotiable bills of exchange were recognized in this state and elsewhere. (Jarvis *vs.* Wilson, 46 Conn. 90, 91.) The act purports to relate to negotiable instruments only. When originally enacted in 1897 it was entitled 'An Act Relating to Negotiable Instruments, being an Act to establish a Law Uniform with the Laws of Other States on that Subject.' The subject to which the act relates is stated in the first part of the title, and its purpose stated in the last part. The history of the act is well known. The laws relating to negotiable paper had not been uniform in the different states. As such paper circulated between the different states it was important to the commercial world that the laws of the different states relating thereto should be uniform. The act was passed upon the recommendation of the National Conference of the State Boards of Commissioners for Promoting Uniformity of Legislation in the United States, and conforms to the bill for an act which they caused to be prepared. Mr. Crawford, who was employed to prepare the draft of the bill which the Commissioners recommended for adoption, says the law was not intended to affect non-negotiable instruments. The law is confined to negotiable instruments. No attempt is made to deal with instruments which are non-negotiable; and they are not governed by the statute. Crawford's Annotated Negotiable Instruments Law

(3 Ed.), p. 2, note a: 'Non-negotiable instruments are not intended to circulate from hand to hand. The need for uniformity of law in different states relating to them does not exist.'"

State Bank of LaCrosse *vs.* Michel, 152 Wis. 88, 1913:

At p. 91—"In considering whether the words used in the section should have their exact and precise meaning or whether they should be given their colloquial and inexact meaning, it is not only proper to consider the fact, if it be a fact, that the exact meaning would lead to unjust if not absurd results, but also to consider the defects or failings in existing law which the act was expected to correct and the general object which the law makers had in mind.

"It is very well known that the Negotiable Instruments Law was the result of a widespread conviction that it would be a great benefit to the American business world if the laws governing negotiable instruments could be made uniform throughout the country, instead of being diverse in many particulars in nearly every state. The law was prepared with the hope that it might be adopted practically without change in all of the states.

"The purpose of the law was not to make radical changes in long-established and fundamental principles, but to wipe out the many differences in minor details existing between the laws of the various states by adopting in each case of difference that uniform rule which was best adapted to the needs of the business world. The idea was to secure uniformity by wiping out small differences, not to change the general principles of commercial law."

Hill *vs.* Dillon, 151 Mo. App. 86; 161 S. W. 881, 1913:

At p. 886—"The Negotiable Instruments Law, as adopted in this state, was not a new or hastily drawn statute. It had already been enacted by a number of states and had been carefully criticized by the Bar generally. The subject of want and failure of consideration was in the minds of the authors and was treated in Section 9999. It cannot be doubted that, when Section 10025 was drawn defining a defective title, these questions pertaining to consideration were duly considered. If it had been the intention to make the title defective where there was total or partial want or failure of consideration, this would have been stated with the same clearness of expression that appears throughout the act. The framers of the law knew the various decisions as to the burden of proof and the different rules where defense was fraud or illegality and where it was such want or failure of consideration."

Whitcomb *vs.* The National Bank of Baltimore, Court of Appeals Md., 123 Md. 612:

"The statute (meaning the Negotiable Instruments Law) was enacted upon the recommendation of the Commission representing Maryland in the movement to promote uniformity of legislation. The same measure has been adopted as a part of the statutory law of a number of the states of the union. The primary purpose of its enactment was to secure uniformity in the law governing negotiable instruments. (Vanderford *vs.* The Farmer's and Mechanic's National Bank of Westminster, 105 Md. 164.) In order that this object may be realized it is important that differences of judicial construction as to its application should be avoided so far as may be reasonably practicable. This end can best be attained by allowing to the language of the statute the full effect to which it is legitimately entitled. The surest means of producing an opposite tendency would be the attempt to introduce possible but unnecessary distinctions and qualifications for the purpose of restricting the scope and meaning of the terms employed in this well-considered legislation."

Plaza Farmer's Union Warehouse & Elevator Co. *vs.* Ryan, 138 Pac. 651, 1914, Wash.:

At p. 652—"The purpose of the Negotiable Instruments Act was to make certain and uniform the rules governing negotiable paper, displacing the 'Law Merchant,' which, through hard cases and in accumulation of conflicting decisions, had become uncertain and variant. (Wash. Finance Corporation *vs.* Glass, 74 Wash. 653; 134 Pac. 480; 46 L. R. A. (N. S.), 1043.)"

We have cited thus at length from so many cases what may appear to be unnecessary duplication in order to show that we realize that many courts take judicial knowledge of the existence of the Conference of Commissioners on Uniform State Laws, of the work it is engaged in and of the purpose and effect of a uniform law when adopted by the legislatures of the several states and other jurisdictions of the United States. These courts recognize that to give uniform effect to a uniform law there must be uniformity in judicial decisions in cases under that law, which can only be reached by following as precedents the decisions in other jurisdictions under the same sections of the same uniform law.

Immediately upon the adoption of the Negotiable Instruments Law the Chairman of your committee began to collect all cases in which the provisions of the law are applicable in the states that passed this law, and during the seven years that he was President

of this Conference the results were submitted by him in his annual address. He has continued to collect these cases every year, and the following table gives in detail the results:

SUMMARY OF CASES UNDER THE NEGOTIABLE INSTRUMENTS LAW.

States.	Cited.	Not cited.	Total.	Some cases cited, others not.
Alabama	7	11	18	1
Alaska	....	....	....	....
Arizona	....	3	3	....
Arkansas	....	....	....	....
California	1	....	1	....
Canada	....	....	....	....
Colorado	13	9	22	2
Connecticut	13	5	18	1
Delaware	2	....	2	....
District of Columbia	12	3	15	1
Florida	12	1	13	1
Georgia	....	....	....	....
Hawaii	....	....	....	....
Idaho	22	7	29	1
Illinois	16	23	39	1
Indiana	....	....	....	....
Iowa	33	14	47	1
Kansas	21	17	38	2
Kentucky	34	9	43	3
Louisiana	8	11	19	1
Maine	....	....	....	....
Maryland	10	3	13	2
Massachusetts	38	30	68	4
Michigan	6	11	17	3
Minnesota	28	23	51	6
Mississippi	....	....	....	....
Missouri	....	....	....	....
Montana	4	3	7	....
Nebraska	14	11	25	1
Nevada	....	....	....	....
New Hampshire	....	....	....	....
New Jersey	20	4	24	1
New Mexico	3	....	3	....
New York	189	117	306	13
North Carolina	31	20	51	2
North Dakota	14	9	23	1
Ohio	8	8	16	2

States.	Cited.	Not cited.	Total.	Some cases cited, others not.
Oklahoma	6	10	16	1
Oregon	27	6	33	4
Pennsylvania	23	34	57	6
Philippine Islands..	....	....	....	....
Porto Rico	....	....	....	....
Rhode Island	6	4	10	1
South Carolina	....	....	....	....
South Dakota	....	....	....	....
Tennessee	15	3	18	2
Texas	....	....	....	....
Utah	9	3	12	1
Vermont	1	....	1	....
Virginia	12	12	24	....
Washington	44	26	70	7
West Virginia	2	4	6	1
Wisconsin	28	9	37	3
Wyoming	2	2	4	....
In the federal courts	18	15	33	1
Total	752	480	1232	77

This table shows that in 480 of 1232 cases under this statute of which we have record and analysis, this law is ignored by the courts, and so far as the reports of these cases disclose, by the counsel on one side or the other and generally by both. But in fairness to those counsel it must be remembered that it may be the reports of the cases that are at fault, for but few reporters give more than a scant statement of the points and authorities submitted by counsel. Certain it is, however, that with remarkable regularity year after year, in over 35 per cent of the opinions as reported officially and in the Reports of the West system, the Uniform Negotiable Instruments Law is ignored, although it is on the statute book of the jurisdiction in which these cases are decided. One would naturally suppose that even if counsel neglect to cite the appropriate sections of this statute and the cases decided thereunder in other courts, upon their briefs, the first inquiry of the judges, upon taking up such a case in their consultation room, after argument thereon, would be, "What have we on this subject on our statute book?"

This is not done, however, in at least one-third of the cases under this law, for if it were done the judges could not escape discovery of this statute, embracing as it does the whole law of negotiable instruments.

What makes this attitude of the courts towards this statute still more strange to the philosophical inquirer is the fact, often patent, that sometimes after opinions are handed down that cite the appropriate sections of this statute (even though no adequate citation is made of cases in other jurisdictions under the same sections) the Negotiable Instruments Law is ignored in these same courts in the next cases before them that plainly are determinable under the provisions of the law.

It is not enough to excuse this failure to cite the statute and the cases decided under it by replying that the Uniform Negotiable Instruments Law but states in terse form the well-recognized rules of the "Law Merchant," and that when courts neglect to cite the appropriate sections of this statute on their statute book and the cases decided under it in their own and in other courts, citing instead the familiar rules of the "Law Merchant" applicable to the case, with old cases decided under that principle of the "Law Merchant" long before the Negotiable Instruments Law was adopted, the result is the same as if the course recommended were followed.

It is confidently submitted that to carry out the purpose sought to be carried out by the adoption in different jurisdictions of the same law, the source of authority is no longer the old law, but it is the statement of law as embodied in the uniform statute, whether it be in conformity with or contrary to the old law, together with the corollary that all courts in jurisdictions adopting the uniform law must look for precedents to decisions under that law in their own and other courts, either to follow them if correct, or to differ from them if incorrect.

Let us look at this subject from another point of view: Suppose the principle adopted in a certain section of the uniform law is different from that of the "Law Merchant" (although this is never the case), or suppose that of two discordant principles of the "Law Merchant" the one followed in the uniform law is not

the one hitherto followed in a particular state (and this sometimes is the case). It is clear that when once the Uniform Negotiable Instruments Law is adopted, it is the duty of the courts to follow this law, even though it is contrary to the old law of that court and the decisions under that old law. The source of authority has become what the new law, the Negotiable Instruments Act, provides as the law. Is this any less the case if the particular principle in question as embodied in the Negotiable Instruments Law happens to be the same as was the law in that jurisdiction before the Negotiable Instruments Law was adopted there? In either case the real source of authority is the law as newly stated and the decisions under that new way of stating it, in all the jurisdictions that have adopted it. The old law, the old cases and the old text books may be consulted and cited to trace the historical origin of the doctrine in question, to illustrate its development, etc., but the real source of authority is the new, the uniform law, and the new precedents, the cases decided under it. The old law and the old precedents are superseded by the new law and the new precedents. This is particularly the case when the new law is one that is to be followed as a uniform law, in 50 or more different jurisdictions.

It will be said at once that there is a great difference between a system like our federal system, on the one hand, under which decisions in the circuit and district courts are subject to the ultimate ruling of the Supreme Court, which, when once given, are to be followed in the lower courts, and the system on the other hand of uniform legislation through the adoption by the states of uniform laws drafted by a conference of state commissioners appointed by the state legislatures for that purpose, and that there is no appellate Supreme Court of the states to which divergent decisions under the same sections of the uniform law can be taken, in order to secure a decision that will be binding upon all the courts of the states that have adopted the same uniform law. But surely it is proper to urge upon all such courts that to carry out to the full the beneficient purposes sought to be served by uniform state legislation, which purposes are judicially taken notice of and followed by the courts of New York, Virginia, Ohio, Missouri,

Wisconsin, Pennsylvania, Kentucky, Oregon, Iowa, Montana, Massachusetts, Oklahoma, Connecticut, Washington and Maryland, as shown by the cases already cited, the courts must do their share by rendering uniform decisions under the uniform law. To do this they must cite the uniform law and the cases under it more frequently, and the old law and the old cases and old text books less frequently. Indeed, is not this course all the more necessary just because there is no appellate court to which an appeal can be taken when decisions are diverging or are not based upon the actual statute on their statute book and the decisions under that statute?

Noblesse oblige is a maxim to be followed even more fully where there is no higher power to correct error, and it is only by following this course that uniform decisions can be looked for, even under a uniform law. The courts are called upon to enlarge their views, to look over a broader horizon and to help in the creation of a new juristic conception, the growth of a new body of precedents, consisting of the cases in all the states under the same uniform law, uniformly construed and applied by their uniform decisions.

We are pleading the cause not of one uniform law, the Negotiable Instruments Law, but of uniform legislation generally. The Conference of Commissioners on Uniform State Laws have completed a very complete set of Uniform Commercial Laws, the Uniform Negotiable Instruments Law, the Uniform Warehouse Receipts Law, the Uniform Sales Law, the Uniform Bills of Lading Law and the Uniform Transfers of Stock Law. Many states have adopted all five of these uniform laws, and if the courts are to ignore these laws and the decisions under them, the Conference of Commissioners on Uniform State Laws might as well retire from their endeavor to secure the adoption of uniform laws, for of what use are uniform laws if they are not to be uniformly construed in the courts of this land?

With all due respect to the learning of the lawyers and the judges of our country candor calls upon us, in the performance of the duty of writing this report, to call attention to the evidence furnished by these decisions of cases under the uniform Negoti-

able Instruments Law, that many of the counsel therein and many of the judges in their opinions are more imbued with the spirit of the common law than with the spirit of the "Law Merchant." The word "surety" is not to be found even once in the uniform statute under consideration, yet counsel, in their briefs and arguments, as well as judges in their opinions, speak constantly of certain parties to the cases as being sureties. It is a common law term, unknown to the "Law Merchant." This carrying over into the field of the "Law Merchant" the use of terms of the common law shows that the lawyers and judges have not learned to think in terms of the "Law Merchant" when dealing with questions under the "Law Merchant," but think and therefore reason as if they were still dealing with questions under the common law.[1] It is this obliteration or ignoring of the distinction between two different systems that leads the judges in many of these cases, including some above cited, to speak of "the common law of negotiable instruments," meaning "the Law Merchant." We do not speak of the common law of equity, nor of the common law of admiralty. The "Law Merchant," like equity, is not a part of the common law; it is a separate system of law. As Bigelow says in "The Law of Bills, Notes and Checques," p. 5:

"The mischief lies in the mistaken notion implied, that the 'Law Merchant' is a sort of poor relation of the common law, or rather that it is a dependent of the common law, subject to it wherever its own language is not plain. Such instances, in other words, overlook the fact that the 'Law Merchant' is an independent parallel system of law, like equity or admiralty. The 'Law Merchant' is not even a modification of the common law; it occupies a field over which the common law does not and never did extend."

[1] See Lewy *vs.* Wilkinson, La. 64, So. 1003, 1914, in which the court pointed out that while the pleadings stated that the defendant obligated himself as surety, the note itself showed the defendant was an indorser, citing the appropriate secs. 131-3 (71-192). The sections first cited are those of the New York statute, while those next cited (in parenthesis) are those as numbered by the Conference.

The case is also interesting as illustrative of the citation of some sections of the act while ignoring others, *i. e.*, sec. 201 (120) should also have been cited.

While, generally speaking, our federal courts regard the laws of the several states and their construction by the state courts,[1] this is not necessarily true in case of questions of general commercial law. Here is recognition by the federal courts, including the Supreme Court of the United States, that the law of negotiable instruments is not a part of the common law of the states.

In reality it is a part of international law, the custom of merchants not being limited exclusively to England and the United States.

Only mischief can arise or has arisen from undertaking to superimpose common law rules and reasoning upon the law of negotiable instruments, instead of following the rules established by the custom of merchants.

"Before legislatures enacted statutes and the courts decided cases which became a part of the written law, the necessities of business and the usages of trade produced a system controlling absolutely commercial intercourse." (Eaton & Gilbert on Commercial Paper, 52.)

The too general want of knowledge of the "Law Merchant" in the early settlements of our country left its mark upon the legislation and the decision of cases in some of the states that have now adopted the Uniform Negotiable Instruments Law. For instance, what are we to think of a law in one of these states that provided that no note should be considered to be a negotiable note unless it contained the words, "Value received"? What are we to think of a juristic system that put non-negotiable notes upon the same footing as negotiable notes? These are but stray samples of the evidence furnished by an examination of early statutes and early cases on bills and notes in the states of our union, that show an ignorance of the principles of the "Law Merchant" out of which some have not yet entirely emerged. To secure uniformity in decisions under the Uniform Negotiable Instruments Act there must be more intimate knowledge of the "Law Merchant."

[1] The court held that the release of one indorser through a compromise made with the payee only, did not release the other indorser. As rules of decisions to be followed in the trial of cases at common law in the federal courts, they are not bound by the decisions of the state courts.

Out of the 25 cases under the act in the courts of the United States prior to October, 1913, when the article on the subject appeared in 77 Central Law Journal 287, in only 13 cases was the act referred to. The result was that in the 12 cases where the act was ignored not a single case was cited of the great number that had been decided in other jurisdictions under the same sections of the same law.[1]

How are we to account for the fact that the very courts that cite the act in one case sometimes ignore it in the next case, although it is equally applicable? Certainly by this time, with the act in force in 47 of the jurisdictions of the country and with many text books relating to the act and to cases under it, some already running into several editions, coming out year after year since the adoption of the act in 1897, whenever a case arises in any court in a jurisdiction where the act is on the statute book, the first inquiry should be, What has the act to say on this case? and the next inquiry should be, What are the decisions under this act under the same sections in the various jurisdictions in which it is in force?

In the courts of Alabama 12 cases had been tried up to October, 1913, in which the provisions of the act, in force in that state, were applicable. In 10 of these cases the act was ignored.[2]

Prior to February, 1914, 86 cases had arisen in which Section 51 (25) (an antecedent debt constitutes value, etc.) was applicable, yet in 35 of the cases it was ignored, together with all the decisions under it in other jurisdictions under the same law. Even in the 51 cases in which it was cited, only four opinions cited cases under it in other jurisdictions, and in only one case was this done adequately. The result is, particularly in the courts of New York, utter confusion on this subject.[3]

Prior to February, 1914, in the courts of Louisiana, state and federal, 13 cases had arisen under the act. In seven of these cases the act was ignored, in five cases it was cited, and in one case, while it was cited in part, one section bearing upon the case was

[1] 77 Cent. Law Journal, 287.
[2] 12 Mich. Law Rev., 96.
[3] 23 Yale Law Journal, 293.

not cited, while in no case was any one of the numerous decisions under the same sections of the same uniform law adopted in other jurisdictions, referred to by court or counsel, so far as the reports show.[1]

As a result of the examination of the 51 cases in the courts of Pennsylvania under the act prior to April, 1914, it is found that the act and all the cases decided under it were ignored in 25 cases, while in some of the cases in which certain sections of the act were cited, other sections equally applicable were ignored.

The neglect of the law on the statute book of this state is emphasized by the fact that of all the cases in which the act was cited in only one case was there a citation of decisions in other jurisdictions under the act, and in that case but two such cases were cited.[2]

Out of all the cases that have arisen in our courts since the adoption of the Uniform Negotiable Instruments Law, there is not a single case in which a thorough, complete examination and citation of the cases under the same section, in other states, was made, either by counsel in their briefs or by the court in their written opinion, so far as we can judge by the printed official reports of these cases.

We hope that it will not be thought we contend that this course is always necessary. In some cases, as the court says in the opinion, the language of the Negotiable Instruments Act is so clear that no citation of authority is necessary. But in many cases, especially where there has been a difference in the principle followed in different courts, such a course is necessary, to give weight as precedents to be followed, of the first decisions under the new uniform law. It is greatly to be regretted that this is not being done.

We are not without official recognition of the fact already stated by us that counsel often fail to cite the statute. In Mutual Loan Association *vs.* Lesser, 76 A. D. 614, 1902, after dismissal of the complaint upon appeal from judgments for the defendants based thereon, O'Brien, J., said: "The fact clearly appears, how-

[1] 78 Cent. Law Journal, 130.
[2] 62 Pa. Law Rev., 426.

ever, and is not disputed, that the error which crept in upon the trial was in not drawing the court's attention to the provision of the Negotiable Instruments Law, which changed the old rule as to the voiding of a note in case it is altered."

It is not claimed that the attitude of the New York courts is one of hostility or even of indifference to the act. On the contrary, in the case of Shattuck *vs.* Guardian Tr. Co., 204 N. Y. 200, 1912, reversing the same case, 145 A. D. 734, 1911; 130 N. Y. Supp. 658, 1912, it was held that the act is one of those general statutes that promulgate rules of substantive law rather than those of pleading or evidence.

In one respect the lawyers and the judges of this country have conformed better to the "Law Merchant" than have the lawyers and the judges of England, for in conformity with the spirit of the "Law Merchant," American courts have insisted that to be negotiable a note must be made to the order of a payee; to a named payee or order; or to bearer, while this has not been the case in English courts.

The St. 3 and 4 Anne, c. 9 (1705), made perpetual by 7 Anne, c. 25 (1708), made negotiable promissory notes assignable or indorsable over in the same manner as inland bills of exchange are, or may be according to the custom of merchants. It provided "That all notes in writing that . . . . shall be made and signed by any person . . . . whereby such person . . . . shall promise to pay to any other person . . . . his or her . . . . order or unto bearer, any sum of money mentioned in such note . . . . shall be assignable or indorsable over, in the same manner as inland bills of exchange are or may be, according to the custom of merchants."

It is evident that the English draftsman or draftsmen of this law, two centuries ago, were no more successful than more recent American draftsmen in avoiding prolixity and unnecessary verbiage or in stating definitely and concisely what they meant. For it is evident that, according to the language of this act, a negotiable promissory note may be (1) payable to A; or (2) payable to the order of A; or (3) payable to bearer.

This error has been perpetuated in the English Bills of Exchange Act of 1882:

"SECTION 83.—A promissory note is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to the bearer."

"SECTION 5.—A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee."

The language used in the draft of an international uniform law of bills and notes proposed at the International Conference on Bills of Exchange, held at the Hague in June, 1910, is not clear. Article I provides that "A bill of exchange must contain . . . . the name of the party who is to pay. . . . ." The name of the payee, with no mention of order except in the title "Preliminary Draft of the Uniform Law on Bills of Exchange and Promissory Notes Payable to Order."

Article 86 states that "A promissory note to order must . . . . specify the name of the person to whom it is payable," leaving it in doubt whether the word *order* must be used, and omitting to state whether a promissory note may be made payable to bearer.

A's note payable to B is a negotiable instrument under this definition.

This draft was signed by the representatives of different states, and among them we find, "United States of America, Charles A. Conant (with the reservation made in the declaration read by me during the plenary session of Thursday, July 21.)"

We have not been able to ascertain what this reservation was, but it is evident that these definitions cannot be accepted in the United States.

In England, as well before the Bills of Exchange Act as since, a note payable to A (without the word "order") is negotiable.

Burchell *vs.* Slocock, Ld. Raym. 1545 (1728):

"The defendant demurred and showed for cause that the note set out in that court (promising to pay to Burchell) is not a promissory note within the statute: and the plaintiff joined in the demurrer, but the court held it clearly to be a promissory note within 3 and 4 Anne, c. 9, and judgment was given for the plaintiff." (The head note is misleading.) This was affirmed by Lord Kenyon in Smith *vs.* Kendall, 6 G. R. 123, 1794, "I promise to pay to Mr. Smith, currier, £40." (Again, the head note is misleading.)

A check payable to A or order carries with it the same ambiguity. If made payable to the order of A there can be no question that A must write his name on it if he would acknowledge payment or pass title to another. If either a note or a check is payable to A this ambiguity would not have arisen had the draftsmen of the St. 3 and 4 Anne been more careful in the words used.

In this country we have escaped this pitfall fortunately and in accord with the spirit of the "Law Merchant," a note or a check payable to A is not a negotiable instrument.[1] It is submitted that under the language used in the Negotiable Instruments Law in defining negotiability, when interpreted in the spirit of the "Law Merchant" and not in the spirit of lawmakers who were seeking to superimpose the principles of the common law of England, such a note or check payable to A is not a negotiable instrument, and the addition of "or order," so that the note or check reads "Pay to A or order," should be avoided.

According to Section 20, Subdivision 4 (1 Subd. 4) an instrument, to be negotiable, must be payable to order or to bearer; and according to Section 320 (184) it must be payable to order or to bearer.

Strictly and correctly speaking, an instrument payable to A or order does not fulfill this requirement. This difficulty has been met in the act, Section 27 (8), where it is provided that an instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It is to be regretted that the English cases did not construe the St. 3 and 4 Anne to mean this, and that this has not been consistently adhered to, both by statutes and decisions, both in England and in the United States.

These facts show that ignorance or disregard of the "Law Merchant" is not confined to the United States, but exists else-

[1] Gilley *vs.* Hawell, 118 Tenn. 115, 101 S. W. 424, 1906: A note payable to Robert B. Meeks is not a negotiable instrument under sec. 20 (1) of the Uniform Negotiable Instruments Act and this act impliedly repealed an old act providing otherwise.

"In other words, under the common law (meaning probably the 'Law Merchant' as followed in common law courts) in order that a note should be negotiable, it had to be payable to order, or to bearer, and not directly to the payee."

where also. They emphasize the fact also that stricter attention should be given to the Uniform Negotiable Instruments Law, and to the cases decided under it, instead of falling back on old cases and old authorities. Even when the principle followed is the same, the precise language used in making a new statement of the old law and the body of new decisions under the new uniform law are the new source of authorities that must be studied, cited and followed if we are to see a new juristic system come into existence, of uniform judicial decisions in all the states and other jurisdictions of this country, all under the same uniform law.

AMASA M. EATON, *Chairman,*
W. A. BLOUNT,
HENRY STOCKBRIDGE,
CHARLES N. POTTER,
STEPHEN H. ALLEN,
Special Committee on
Uniformity of Judicial Decisions.

COMMISSIONERS ON UNIFORM STATE LAWS.

BALTIMORE, November 15, 1913.

MY DEAR SIR: We respectfully ask your attention for a word with reference to the work of the Commissioners on Uniform State Laws, appointed as the official representatives of the various states to bring about, as far as may be, uniformity in the laws of such states in matters of interstate interest, but not coming strictly within the definition of interstate commerce.

For 24 years this work has been in progress, and the Commissioners have labored assiduously in the performance of their duties. By way of illustration, reference may be had to the Negotiable Instruments Act originally drafted and promulgated by the Conference of Commissioners in 1896, and which, by the zealous and persistent efforts of the Commissioners since that date, has become the law in 46 states and territories. Some six or seven other acts have, from time to time, been drafted and promulgated by the Conference of Commissioners and have been and are in process of adoption by the various states since the time when they were first offered to the various legislatures.

The point which we desire to bring to your attention is that

much support and co-operation may be given to this body of representatives of the various states in their efforts to secure uniformity of law, by recognition on the part of the Bench, the judicial officers within whose province lies the interpretation of the statutes in question, if such judicial officers would endeavor to make the interpretation and construction of these uniform statutes, and the various parts of them, such as would preserve the uniformity desired, and thereby promote it.

A reference in decisions by your honor to the character of the act, as one intended to bring about uniformity, and a reference to decisions of other states dealing with the same question under the same phraseology embodied in the corresponding statute of other states, would be of great assistance to the work in question, and we therefore respectfully ask your co-operation in this regard.

Permit us also to say that in case you desire further information or data with reference to the work, objects or nature of the Conference of Commissioners, we are at your service and shall deem it a pleasure to afford you the fullest information.

Very respectfully,

AMASA M. EATON, Providence, R. I., *Chairman*,
HENRY STOCKBRIDGE,
CHARLES N. POTTER,
W. A. BLOUNT,
STEPHEN H. ALLEN.

COMMISSIONERS ON UNIFORM STATE LAWS.

BALTIMORE, December 15, 1913.

DEAR SIR: Supplementing the letter sent to you a short time since, and acting on behalf of the Commissioners on Uniform State Laws, permit us to bring to your attention at this time the following facts:

For a number of years past the legislatures of the several states have been enacting what have come to be known as the uniform laws. The object of all such legislation is of course to bring into a condition of harmony the laws of the various states upon subjects constituting the more important subjects of commercial law, together with a few other matters in regard to which there has been and is a demand for greater uniformity.

It is self-evident that the enactment of such laws will fail of its purpose unless there goes hand in hand with it a uniformity of judicial interpretation and construction. Looking to this end, at the last Conference of the Commissioners it was decided to establish a bureau for the aid of the courts, which bureau should prepare and keep at all times up to date a notation of all decisions rendered in the courts of last resort of each state upon any and all of the uniform acts, and which bureau should promptly furnish to any judge requesting it a complete list of all such adjudications relating to any section or sections of any of the acts. This service will be rendered without charge upon the receipt of a request for the information.

The act known as the Negotiable Instruments Act, being the first of the uniform laws adopted in a large number of the states, and being also the act most widely adopted, has been selected as the first for annotation, and the Commissioners will be prepared to supply citations of this act by January 1, next. In sending any request you are asked to give the section number in regard to which the information is desired, using either the number as contained in the act as drafted by the Commissioners or as in the act passed in your state, but indicating of which notation you make use.

As the annotations of the act are completed you will be promptly notified.

All requests for information should be addressed to either:

AMASA M. EATON,
Providence, R. I.,

or to

HENRY STOCKBRIDGE,
75 Gunther Bldg., Baltimore, Md.

AMASA M. EATON, *Chairman,*
HENRY STOCKBRIDGE,
CHARLES N. POTTER,
W. A. BLOUNT,
STEPHEN H. ALLEN,
Committee.

NOTE.—It is with profound sorrow that the committee records the death, on October 3, 1914, of its Chairman, Hon. Amasa M. Eaton, of Providence, R. I. Mr. Eaton had been a member of the Commissioners from the beginning of their labors, had served for seven years as President of the body and was widely known as a scholarly, painstaking and unremitting student of the law, particularly of those subjects with which the Uniform Acts had endeavored to deal. It was to his study that the major part of the foregoing report is due, and it is fortunate that he was spared to prepare this brief epitome of his labors. His selection as Chairman of this committee was a most happy one, and in his death this committee, and the Commissioners as a body, have lost a most valued, earnest and faithful worker for the promotion of the ends of uniformity in legislation and judicial interpretation of such statutes.

THE COMMITTEE.

TABLE OF UNIFORM COMMERCIAL STATUTES PREPARED BY COMMITTEE ON UNIFORMITY OF JUDICIAL DECISIONS OCTOBER 14, 1914.

Table showing date of enactment of the uniform commercial statutes in the several states, and the codification of the same in the states where they have been codified since their enactment.

NEGOTIABLE INSTRUMENTS ACT.

Alabama .....1907, p. 660; Civ. Code (1907), p. 1063.
Alaska .....1913, c. 64, p. 159; App. Apl. 29/13.
Arizona .....1913, c. 67; Rev. Stat. (1913), Title 36.
Arkansas .....1913, c. 81, p. 260; App. Feb. 21/13.
California .....Passed in 1911 and vetoed by the Governor.
Colorado .....1897, p. 210; Col. Stat. Anno. (1909), IV, p. 2918.
Connecticut .....1897, c. 74, p. 782.
Delaware .....1911, c. 191, p. 399.
District of Columbia.1899, Code (1911), p. 338; 30 Stat. p. 785.
Florida .....1897, c. 4524; Gen. Stat. Fla. (1906), p. 1147.
Hawaii .....1907, Act 89; App. Apl. 20/07.
Idaho .....1903, No. 380; Rev. Code (1908), p. 1326.
Illinois .....1907, p. 403; Rev. Stat. (1911), p. 1591.
Indiana .....1913, p. 120; Burn's Anno. Stat. (1914), IV, p. 557.
Iowa .....1902, c. 130; Code Supp. (1907), p. 729.
Kansas .....1905, c. 310, p. 478.
Kentucky .....1904, p. 213; Carroll's Stat. (1909), p. 1492.

Louisiana .....1904, No. 64 p. 147.
Maryland .....1898, c. 119; Code (1912), Art. 13.
Massachusetts .....1898, c. 533; Rev. Laws (1902), I, p. 628.
Michigan .....1905, No. 265; Howell's Stat. (1913), II, p. 1240.
Minnesota .....1913, c. 272, p. 373.
Missouri .....1905, p. 243; Rev. Stat. (1910), III, p. 9971.
Montana .....1903, c. 121; Rev. Code (1908), Title 15.
Nebraska .....1905, p. 397; Rev. Stat. (1913), p. 1516.
New Hampshire....1909, c. 123; Pub. Stat. Supp. (1913), p. 465.
New Jersey .....1902, p. 583; Comp. Stat. (1911), III, p. 3734.
New Mexico.....1907, c. 83, p. 161; App. March 21/07.
New York .....1897, c. 612; Con. Laws (1907), III, p. 3636.
Nevada .....1907, No. 112; Rev. Laws (1912), I, p. 769.
North Carolina.....1899, c. 733 Pell's Revisal (1908), I, p. 2151.
North Dakota .....1899, c. 113 Rev. Code (1905), p. 1006.
Ohio .....1902, No. 169; Gen. Code (1910), II, p. 1718.
Oklahoma .....1909, p. 387; Rev. Laws Anno. (1910), p. 1059.
Oregon .....1899, p. 18; Lord's Oregon Laws (1910), p. 2128.
Pennsylvania .....1901, No. 162, p. 194.
Rhode Island.....1899, c. 674; Gen. Laws (1909), I, p. 648.
South Carolina.....1914, c. 396, p. 668.*
South Dakota .....1913, c. 279, p. 445.
Tennessee .....1899, c. 94; Code Supp. (1903), Secs. 3505-3516.
Utah .....1899, pp. 122-148; Comp. Laws (1907), p. 629.
Vermont .....1912, c. 99 p. 114.
Virginia .....1897-8, p. 896; Va. Code (1904), II, p. 1455.
Washington .....1899, p. 340; Codes & Stats. (1909), II, p. 120.
West Virginia.....1907, c. 81; Code Anno. (1913), II, p. 1894.
Wisconsin .....1899, c. 356; Gen. Stat. (1911), Ch. 78.
Wyoming .....1905, c. 43, Com. Stat. (1910), p. 805.

*Vetoed by Governor and passed over his veto.

WAREHOUSE RECEIPTS ACT.

Alaska .....1913, c. 65, p. 196; App. Apl. 28/13.
California .....1909, p. 437; Deering's Gen. Laws (1909), p. 1483.
Colorado .....1911, p. 653; Col. Stat. Anno. (1909), V, p. 4478.
Connecticut .....1907, c. 220, p. 807.
District of Columbia.1910, Code (1911), p. 419, 36 Stat., Part I, p. 301.
Illinois .....1907, p. 477; Rev. Stat. (1911), Ch. 114, p. 1869.
Iowa .....1907, c. 160; Code Supp. (1907), p. 786.
Kansas .....1909, c. 262, p. 629.
Louisiana .....1908, No. 221, p. 326.
Maryland .....1910, c. 406; Code (1912), Art. 14a.
Massachusetts .....1907, c. 582 p. 930.

Michigan .....1909, No. 303; Howell's Stat. (1913), II, p. 1316.
Minnesota .....1913, c. 161, p. 198.
Missouri .....1911, p. 431.
Nebraska .....1909, p. 536; Rev. Stat. (1913), Ch. 76 p. 2048.
Nevada .....1913, c. 269, p. 424, App. Mar. 26/13.
New Jersey .....1907, p. 341, Comp. Stat. (1911), IV, p. 5777.
New Mexico.....1909, c. 38, p. 86.
New York .....1907, c. 732 Con. Laws (1907), II, p. 1822.
Ohio .....1908, p. 400; Gen. Code (1910), II, Div. 6, p. 1789.
Oregon .....1913, c. 305, p. 581, App. Feb. 27/13.
Pennsylvania .....1909, No. 13, p. 19.
Rhode Island.....1908, c. 1549, Gen. Laws (1909), I, p. 934.
South Dakota .....1913, c. 364, p. 589, App. March 13/13.
Tennessee .....1909, c. 336, p. 1226.
Utah .....1907, c. 139, p. 271.
Vermont .....1912, c. 186, p. 226.
Virginia .....1908, c. 290; Va. Code Supp. (1910), p. 801.
Washington .....1913, c. 99, p. 279; App. March 17/13.
Wisconsin .....1909, c. 291, p. 657.

STOCK TRANSFER ACT.

Alaska .....1913, c. 67, p. 248 App. April 28/13.
Louisiana .....1910, c. 180, p. 265.
Maryland .....1910, c. 73 Code (1912), Art. 23, Sec. 38-60.
Massachusetts .....1910, c. 171, p. 117.
Michigan .....1913, No. 106, p. 180.
New York .....1913, c. 600, Con. Laws Supp. (Personal property Law), p. 1989; A. 6, Sec. 162-185.
Ohio .....1911, p. 500.
Pennsylvania .....1911, p. 126.
Rhode Island .....1912, c. 840, App. May 3/12.
Wisconsin .....1913, c. 458, p. 509.

BILLS OF LADING ACT.

Alaska .....1913, c. 59, p. 139. App. April 28/13.
Connecticut .....1911, c. 182, p. 1444.
Illinois .....1911, p. 227. Rev. Stat. (1911), p. 506; Ch. 27.
Iowa .....1911, c. 155, p. 169.
Louisiana .....1912, No. 94, p. 101.
Maryland .....1910, c. 336; Code (1912), Art. 14.
Massachusetts .....1910, c. 214, p. 149.
Michigan .....1911, No. 165; Howell's Stat. (1913), III, p. 2775.

New York.....1911, c. 248; Con. Laws Supp. (Gen. Business Law), p. 1995.
Ohio .....1911, p. 138.
Pennsylvania .....1911, p. 838.

SALES ACT.

Alaska .....1913, c. 66, p. 215 App. April 30/13.
Arizona .....1913, c. 30; Rev. Stat. (1913), Title 51, p. 1674.
Connecticut .....1907, c. 212, p. 764.
Maryland .....1910, c. 346; Code (1912), Art. 83.
Massachusetts .....1908, c. 237, p. 172..
Michigan .....1913, No. 100, p. 148.
New Jersey .....1907, p. 311; Comp. Stat. (1911), IV, p. 4647.
New York.....1911, c. 571; Gen. Laws Supp. (07-13), p. 1966, Per. Property Law.
Ohio .....1908, p. 413; Gen. Code (1910), II, Div. 5, p. 1766.
Rhode Island.....1908, c. 1548; Gen. Laws (1909), p. 910.
Wisconsin .....1911, c. 549, p. 675.

IV.

ANNOUNCEMENT.

The meeting of the American Bar Association this year will be held at Salt Lake City, Utah, on August 17, 18 and 19.